STATE OF MICHIGAN

COURT OF APPEALS

TERRY ALLEN,

Plaintiff-Appellant,

v

WAYNE COUNTY and WAYNE COUNTY SHERIFF,

Defendants-Appellees.

UNPUBLISHED
January 16, 2001

No. 216841
Wayne Circuit Court
LC No. 97-726391 NO

Before: Smolenski, P.J., and Holbrook, Jr. and Gage, JJ.

PER CURIAM.

Plaintiff appeals as of right from a trial court order granting defendants summary disposition pursuant to MCR 2.116(C)(7), (8) and (10). Plaintiff filed a complaint alleging gross negligence and violations of his state constitutional due process rights arising from defendants' failure to (a) maintain a public facility, (b) protect plaintiff from another inmate's assault, and (c) provide prompt or adequate medical care. Plaintiff appeals as of right. We affirm in part, reverse in part and remand.

Plaintiff averred that as a pretrial detainee in the Wayne County Jail, he was injured when an inmate pushed him while plaintiff stood in a puddle of water. He slipped and fell, hitting his back against a metal table and chair. The source of the water was a plumbing leak in the ceiling. Although plaintiff and his fellow inmates had complained about the leak for several weeks before plaintiff's fall, no one fixed it. After his injury, plaintiff allegedly received delayed and inadequate medical treatment.

The trial court granted summary disposition of all plaintiff's claims for the following reasons: (1) with respect to defendants' failure to maintain the jail, the public building exception did not apply in this case because plaintiff's fall occurred in an area of the jail not open to the general public or general inmate population; (2) neither defendant could be found grossly negligent in failing to prevent the assault of plaintiff because (a) no gross negligence exception to governmental immunity applied to governmental agencies, MCL 691.1407(1); MSA 3.996(107)(1), and (b) defendant sheriff, an elected official, enjoyed immunity for all acts within his authority, and no evidence indicated the sheriff acted outside the scope of his authority, MCL 691.1407(5); MSA 3.996(107)(5); and (3) plaintiff failed to establish that defendants had an

unconstitutional custom or policy of (a) inadequate medical care or (b) failing to protect inmate safety that deprived him of his state constitutional due process rights.

Plaintiff now challenges the trial court's summary disposition rulings. We review de novo a trial court's grant of summary disposition. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995).

Plaintiff first contends that governmental immunity does not shield defendant county from liability for failing to maintain the jail because the public building exception to governmental immunity applies. Under MCL 691.1407(1); MSA 3.996(107)(1), a governmental entity is immune from tort liability when it is performing a governmental function. *Sewell v Southfield Public Schools*, 456 Mich 670, 674; 576 NW2d 153 (1998). While this immunity is broad, it is subject to a few narrowly drawn exceptions, including the public building exception. *Reardon v Dep't of Mental Health*, 430 Mich 398, 407; 424 NW2d 248 (1988).

The public building exception holds governmental agencies responsible for repairing and maintaining public buildings that they control "when open for use by members of the public." MCL 691.1406; MSA 3.996(106). To establish the applicability of the public building exception, a plaintiff must show that (1) a governmental agency is involved, (2) the public building in question is open for use by members of the public, (3) a dangerous or defective condition of the public building itself exists, (4) the governmental agency had actual or constructive knowledge of the alleged defect, and (5) the governmental agency failed to remedy the alleged defective condition after a reasonable period. *Sewell*, *supra* at 675.

Plaintiff showed that defendant Wayne County, a government agency, controlled the jail. Furthermore, the jail constitutes a public building for purposes of the public building exception to governmental immunity, and prisoners are members of the public regardless of whether they are in or out of jail.[1] *Green v Dep't of Corrections*, 386 Mich 459, 464; 192 NW2d 491 (1971). While defendant county correctly argues regarding the third element that transitory conditions and negligent janitorial care do not represent public building defects, *Wade v Dep't of Corrections*, 439 Mich 158, 168-171; 483 NW2d 26 (1992), in this case plaintiff presented evidence that the water that accumulated on the floor directly resulted from a plumbing leak in the ceiling, and that the leak reappeared despite efforts at mopping. Regarding defendant county's knowledge of the defect, plaintiff alleged that he, other inmates, and even deputies

[1] The trial court mistakenly observed that, regardless that the jail is a building open to the public, the accessibility of the accident site itself controls whether to apply the public building exception, citing *Brown v Genesee Co Bd of Comm'rs*, 222 Mich App 363, 366; 564 NW2d 125 (1997). The *Brown* panel subsequently clarified on remand, however, as follows:

> In short, the Supreme Court concluded that if the building in which the plaintiff is injured is a public building open for use by members of the public, regardless of whether the *situs* of the accident is accessible to the public, the plaintiff should be able to invoke the public building exception. [*Brown v Genesee Co Bd of Comm'rs (On Remand)*, 233 Mich App 325, 327-328; 590 NW2d 603 (1998), lv granted 462 Mich 854; 613 NW2d 718 (2000).]

complained about the leak approximately three weeks before plaintiff fell. We find that plaintiff's allegation that the defendant county had knowledge of the defect for several weeks before the fall, when viewed in the light most favorable to plaintiff, creates an issue of fact whether the county failed to remedy the defect within a reasonable time. *Anderson v Wiegand*, 223 Mich App 549, 558; 567 NW2d 452 (1997); *Witherspoon v Guilford*, 203 Mich App 240, 243; 511 NW2d 720 (1994).

We therefore conclude that plaintiff adequately set forth the public building exception to governmental immunity for his negligent maintenance claim against defendant county, and that the trial court improperly granted summary disposition of this claim.[2]

Plaintiff next argues that the trial court erred in dismissing his state constitutional claims against defendants because defendants had a custom or policy that denied him due process. No state damages remedy exists, however, where a municipality's custom or policy violates a plaintiff's state constitutional rights. *Jones v Powell*, 462 Mich 329, 335; 612 NW2d 423 (2000). Thus, the trial court properly granted summary disposition of plaintiff's constitutional claims.[3]

We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael R. Smolenski
/s/ Donald E. Holbrook, Jr.
/s/ Hilda R. Gage

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[2] Plaintiff does not specifically challenge the trial court's dismissal of his claim that defendant county, in an act of gross negligence, failed to prevent his assault by another jail inmate. We note that the trial court correctly granted the county summary disposition of this claim because the gross negligence exception to governmental immunity does not apply to governmental agencies. *Gracey v Wayne Co Clerk*, 213 Mich App 412, 420; 540 NW2d 710 (1995) [citing MCL 691.1407(2); MSA 3.996(107)(2)], overruled in part on other grounds, *American Transmissions, Inc v Attorney General*, 454 Mich 135, 141-143; 560 NW2d 50 (1997). Plaintiff acknowledges that the trial court correctly found defendant sheriff immune from plaintiff's nonconstitutional claims. MCL 691.1407(5); MSA 3.996(107)(5).

[3] Although the trial court dismissed plaintiff's state constitutional claims pursuant to MCR 2.116(C)(10) instead of (C)(8), we will not reverse when the trial court reaches the correct result regardless of the reasoning employed. *Zimmerman v Owens*, 221 Mich App 259, 264; 561 NW2d 475 (1997).